

**Errata #1**  
**Item 2**  
**Board of Supervisors Meeting**  
**September 28, 2011**

Item 2: AMEND COUNTY CODE AND BOARD POLICIES RELATED TO  
COMPLETION OF IMPROVEMENTS REQUIRED AS CONDITION OF APPROVAL OF  
SUBDIVISIONS (9/28/11 – First Reading Ordinance; 10/12/11 – Adopt Ordinance)  
(DISTRICT: ALL)

Staff proposes changes to the suggested revisions to Board Policy I-19  
(Subdivision of Land-Substitution of One Form of Improvement Security for Another -  
Reduction of Security) to ensure state law conformance and to provide greater  
clarity. Board Policy I-19 is attached with highlighting to indicate proposed  
changes since docketing .

**COUNTY OF SAN DIEGO, CALIFORNIA**  
**BOARD OF SUPERVISORS POLICY**

**Subject**

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**Purpose**

To establish a procedure whereby a subdivider who has furnished improvement security ~~in accordance with in the form as prescribed in~~ the County Subdivision Ordinance and Sections 66462 and 66499 of the Government Code to secure the completion of improvements required as a condition of approval of a subdivision map to guarantee construction of and payment for subdivision improvements may substitute any other form of security as prescribed in the County Subdivision Ordinance for said security, and to establish ~~rules and~~ a procedure whereby a subdivider may obtain a partial release of the security- for completed work ~~guaranteeing the performance of the subdivision improvement agreement.~~

~~From time to time to expedite the filing of a subdivision map, a subdivider will furnish security as prescribed in the County Subdivision Ordinance to satisfy the requirement of Sections 66462 and 66499 of the Government Code (Subdivision Map Act) that he/she furnish improvement security to guarantee faithful performance of the agreement to construct or install subdivision improvements and to guarantee payment to the contractor and others who furnished labor or materials. On occasion, a subdivider subsequently determines he/she would prefer to substitute another form of approved security in lieu of his/her present security. Current procedures require that a subdivider first obtain the consent of the Board of Supervisors to such substitution.~~

~~On occasion a subdivider who has completed a portion of the improvements pursuant to the agreement desires that the amount of security be reduced. In the case of a surety bond, a reduction in the penal amount (face amount) of the security will result in reduced premiums. In the event cash is deposited as security, a reduction in the amount held will allow the subdivider the use of the money. The present form of Instrument of Credit in use by the County provides for a periodic release of funds held in trust as work progresses and such fact is certified. Section 66499.7 of the Government Code (Subdivision Map Act) authorizes the partial release of improvement security.~~

**Policy**

It is the policy of the Board of Supervisors that:

A. Replacement Security:

A subdivider who has furnished improvement security in the form prescribed in the County Subdivision Ordinance, pursuant to Sections 66462 and 66499 of the Government Code (Subdivision Map Act), may substitute in place of said security any other form of security as prescribed in the above ordinance.

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On request of a subdivider to make such substitution, the Director of Public Works (~~Director~~), with the assistance of County Counsel where necessary, shall cooperate with the subdivider in the preparation of an appropriate form of substitute security to replace the present security. Substitute security for faithful performance shall be in an amount equal to 100% of the estimated cost as determined by the Director of required improvements at the time of the substitution request. Substitute payment security to guarantee payment to contractors, subcontractors and the persons furnishing labor materials or equipment for the completion of required improvements shall be in the amount of 50% of the unreduced faithful performance security.

Upon approval, the Director ~~of Public Works~~ will forward the substitute security to the Clerk of the Board of Supervisors (~~Clerk~~) for filing. The Clerk will release the original security to the appropriate surety/owner in writing.

B. Reduction in Security:

Subdividers are required by the County Subdivision Ordinance and Subdivision Map Act to provide payment and performance security to guarantee the completion of required subdivision improvements and the payment of workers and suppliers engaged in the construction of the improvements. Payment securities are not subject to partial reduction. As work progresses, the ~~The subdivider may also substitute in place of said security, new security in a reduced amount all according to the following procedures:~~

Procedure for Improvement Security Reduction

~~The~~ Director ~~of Public Works~~ is hereby authorized and delegated the authority to partially release ~~performance securities security for the performance of the subdivision improvement agreement~~ pursuant to the following rules and procedures:

1. a. ~~Improvement-Performance~~ security may be released only upon written request by the subdivider who posted such security.

2. b. ~~The Director of Public Works~~ is authorized to consider requests by a subdivider for the partial release of security only twice for any one improvement agreement.

3. e. Upon receipt of a written request for the partial reduction of ~~improvement-performance~~ security, together with detailed estimates of the value of the work remaining to be completed, the Director ~~of Public Works~~ shall make an initial determination whether such request exceeds the number allowed and the security is sufficient in amount to be ~~released~~ reduced. If satisfied that the security may be reduced,

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the Director ~~of Public Works~~ shall inspect the improvements and verify the percentage and the value of the work remaining to be completed. The Director ~~of Public Works~~ may then authorize a reduction in the amount of security as follows:

          a1)           - No reduction of ~~improvement performance~~ security is authorized where the Director determines that more than 50% of the value of work remains to be completed.

          b2)-       Whenever 50% or more of the value of work has been completed, the ~~original~~ security may be ~~released subsequent to its replacement by security equal to the current value of the remaining work, plus 10% of the current value of the remaining work as a contingency. No reduced~~ pursuant to an engineer's estimate supplied by the engineer of work in accordance with the following schedule.; ~~provided, however, that no such reduction shall result in the release of more than 75% of the highest total required performance security pending completion of the improvements to the satisfaction of the Director incremental release, however, shall result in a remaining security less than 10% of the original.~~

<u>Percent of Construction Completion</u>	<u>Percent of Original Security Retained</u>
<u>0%</u>	<u>100%</u>
<u>50%*</u>	<u>50%*</u>
<u>60%*</u>	<u>40%*</u>
<u>70%*</u>	<u>30%*</u>
<u>75 - 87%</u>	<u>25%</u>
<u>88%</u>	<u>24%</u>
<u>89%</u>	<u>22%</u>
<u>90%</u>	<u>20%</u>
<u>91%</u>	<u>18%</u>
<u>92%</u>	<u>16%</u>
<u>93%</u>	<u>14%</u>
<u>94%</u>	<u>12%</u>
<u>95%</u>	<u>10%</u>
<u>96%</u>	<u>8%</u>
<u>97%</u>	<u>6%</u>
<u>98-100%</u>	<u>5%</u>
<u>Warranty Period</u>	<u>5%</u>

\* For situations where 50% to 75% of the construction is complete, the percent of the original security that will be retained is 100% - X% Construction completed.

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c3) Upon the completion of the improvements to the satisfaction of the Director, the performance security may be reduced to an amount up to 95% of the total required performance security. The remaining 5% shall remain in place for a period of one year following the completion of the improvements as a warranty against defective materials and workmanship. ~~Any partial release authorized herein shall not apply to any required guarantee and warranty period nor to the amount of the security deemed necessary by the Director for such guarantee nor to costs and reasonable expenses and fees, including reasonable attorneys fees therefore.~~

d4): Upon a determination that the ~~improvement-performance~~ security may be partially released, the Director shall notify the holder of the security, the Clerk of the Board of Supervisors and the subdivider in writing of the amount of the reduction. ~~and that the partial reduction does not apply to the warranty or guarantee period or the amount of security deemed necessary for such warranty or guarantee nor to costs and reasonable expenses and fees including reasonable attorney's fees.~~

Sunset Date

This policy will be reviewed for continuance by ~~12-31-09~~ 12-31-18

Board Action

11-10-69 (63)

1-13-76 (15)

12-11-84 (8)

8-8-89 (33)

12-15-93 (5)

5-15-96 (11)

08-07-02 (5)

12-09-08 (33)

CAO Reference

1. Department of Public Works

2. Department of Planning and Land Use

3. County Counsel

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